

ENTERED

August 18, 2021

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

MICHAEL JOSEPH FUHRMAN,

Petitioner,

VS.

WARDEN HEAD,

Respondent.

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CIVIL ACTION NO. 2:21-CV-069

**ORDER ADOPTING MEMORANDUM AND RECOMMENDATION
TO DISMISS CASE FOR FAILURE TO PROSECUTE**

Before the Court is Petitioner's application to proceed *in forma pauperis* (IFP) (D.E. 5). On May 20, 2021, United States Magistrate Judge Jason B. Libby issued a Memorandum and Recommendation (D.E. 8), recommending that this habeas petition be dismissed for want of prosecution because Petitioner has not complied with the requirements to proceed IFP and has not paid the filing fee. Petitioner timely filed his objections (D.E. 10) on June 1, 2021.

Petitioner's objection is that he did not receive any initial instructions from the Clerk of Court regarding having to file his trust fund account statement. Once he did learn of the requirement, he obtained the statement and sent it to the Clerk of Court for filing on the docket of this case well before the Court's deadline. These statements are not supported by a declaration under penalty of perjury and are thus not evidentiary.


However, on June 14, 2021, the Magistrate Judge issued an additional order allowing Petitioner additional time to submit his trust fund statement or pay the filing fee, in which case the Magistrate Judge would withdraw the M&R. D.E. 11. The initial

deadline was June 25, 2021. However, on June 24, 2021, the notice to Petitioner of the Order (D.E. 11) was returned to the Court as undeliverable as addressed. D.E. 12. On June 28, 2021, Petitioner filed a document indicating a temporary change of address. D.E. 13. The Clerk of Court re-noticed the Order (D.E. 11) at the new address and Petitioner acknowledged receipt as of July 30, 2021. D.E. 17.

This Court delayed acting on the M&R, giving Petitioner more than 14 days from the date he received notice to submit the trust fund statement or pay the filing fee. The Clerk of Court has not received any trust fund account statement or payment of the filing fee as of this date. Petitioner's objection is **OVERRULED**.

Having reviewed the findings of fact, conclusions of law, and recommendations set forth in the Magistrate Judge's Memorandum and Recommendation, as well as Petitioner's objections, and all other relevant documents in the record, and having made a de novo disposition of the portions of the Magistrate Judge's Memorandum and Recommendation to which objections were specifically directed, the Court **OVERRULES** Petitioner's objections and **ADOPTS** as its own the findings and conclusions of the Magistrate Judge. Accordingly, the petition for writ of habeas corpus is **DISMISSED WITHOUT PREJUDICE** for failure to prosecute.

ORDERED this 18th day of August, 2021.


NELVA GONZALES RAMOS
UNITED STATES DISTRICT JUDGE